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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,813	05/30/2001	Gary W. Beall	29785/10000	6617

4743 7590 11/12/2003

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 11/12/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/867,813

**Applicant(s)**

BEALL, GARY W.

**Examiner**

Alton N. Pryor

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 27 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 8-22,24 and 27-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 10-22,24,27-32 and 37-49 is/are allowed.
- 6) ☐ Claim(s) 33 and 34 is/are rejected.
- 7) ☐ Claim(s) 35,36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's arguments filed 8/27/03 have been fully considered but they are not persuasive. Arguments are not persuasive for new claims 33 and 34. See art rejection below.

I. Rejection of claims 1,3,7,8,10,16,20,21,23,25,26 under 35 USC 102(b) as being anticipated by Lan on record will not be maintained in light of amendment filed 8/27/03.

Note that claims 1-8,23,25,26 have been cancelled.

II. Rejection of claims 2,4,5,11,15,17,18 under 35 USC 103(a) as being obvious over Lan on record will not be maintained in light of amendment filed 8/27/03. Claims 1-8 have been cancelled.

### ***Claim Rejection under 35 U.S.C. 102(b)***

I. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

II. Claim 33 is rejected under 35 U.S.C. 102(b) as being anticipated by Lan et al (EP 846661; 6/10/98). Lan teaches a sorbent composition comprising an intercalate of dodecylpyrrolidone and montmorillonite clay. The intercalant molecule being connected by ion-dipole interaction. Lan also teaches that water (carrier) is added to the sorbent composition. The sorbent can be formulated as a cosmetic to be applied to hair (scalp). It is inherent that the prior

art composition would have the cation exchange capacity of at least 75 meq / 100 grams since the prior art composition and the instant composition are the same. It is also inherent that the prior art method of using the composition would deactivate the allergen and reduce the allergic reaction once applied to skin (scalp) since the prior art and instant methods are similar. See abstract, page 3 line 30 - page 4 line 2, page 5 lines 10-27, page 6 lines 11-45, page 7 lines 22-35, page 9 lines 43-57.

***Claim Rejection under 35 U.S.C. 103(a)***

III. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

IV. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lan as applied to claims 33. Lan teaches all that is recited in claims 34 except for the instant amounts of ingredients (surface modifier, solvent, clay). It would have been obvious to one having ordinary skill in the art to determine the optimum amounts of ingredients through routine experimentation. One would have been motivated to do this in order to make a sorbent composition that would effectively reduce the reaction of humans to allergens.

***Claim Objection / Allowable Subject Matter***

Claims 35,36 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and

any intervening claims. Claims 9-22,24,27-32,37-49 are allowable. The prior art does not suggest the instant invention comprising a synthetic smectite and instant solvents. The prior art does not suggest the invention being applied as a salve or aerosol spray. The prior does not suggest the instant invention being applied to clothes, shoes, or pets.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

#### ***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Art Unit: 1616

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Alton Pryor

**ALTON N. PRYOR  
PRIMARY EXAMINER**

Primary Examiner, AU 1616  
11/6/03